

Guide to Legislative Drafting



Revised 2016



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LEGISLATIVE DRAFTING IN SOUTH DAKOTA

An Overview

There is no one correct way to draft legislation, but there is a preferred style and form in each legislative setting that guides drafters in their work. The style that is preferred in South Dakota is explained and illustrated in this manual.

The purpose of this manual is to provide the information necessary to produce a usable and understandable bill draft. Joint Rule 6A-5 of the rules of the South Dakota Legislature requires that all legislation be reviewed for style and form by the Legislative Research Council before introduction.

The cardinal principle of legislative drafting is to minimize the possibility of misunderstanding. Complex, legalistic language or the "boilerplate" often found in old statutes is undesirable because it is not easily understood by anyone. The simplest way to state a proposition accurately is usually the best.

Do not permit unfamiliarity or inexperience to prevent you from making an attempt to draft legislation. Experience provides the best instruction. Along the way, if you want to look at an example of a particular type of bill that has been drafted for the current year or prior years, visit the LRC website (<http://sdlegislature.gov>) where you are sure to find a wide range of bills.

Lastly, if you have questions regarding the drafting of legislation, please contact the Legislative Research Council for assistance.

GLOSSARY

ACT. An Act is a bill that has been approved by both houses of the Legislature in identical form and signed by the Governor, or, if vetoed, passed over the Governor's veto.

AMENDMENT. An amendment is an alteration proposed to a bill or resolution adding to, substituting for, or deleting material.

APPROPRIATION. An appropriation is an amount of money set apart by legislative act to be expended for a specific purpose within a specific time period.

BILL. A bill is a proposed law that has been introduced in the Legislature for consideration.

BODY OF A BILL. The body of a bill is the main text of the bill. Everything following the enacting clause is part of the body of the bill.

CATCHLINE. The catchline is the boldface material between the section number and the section material in the *South Dakota Codified Laws*. The catchline is a summarization, prepared by the publisher and Code Counsel, of the material in the section, but it is not a part of the statute and should not be included in any bill draft.

COMMEMORATION. An expression of the Legislature recognizing service or achievements of national or statewide importance or sorrow over a death or loss. Commemorations are done in the form of a resolution and are entered in the journals, but not voted upon.

CONCURRENT RESOLUTION. A concurrent resolution is a form of legislation expressing an opinion of the Legislature. It does not have the force of law but may stimulate some other governmental agency or the public to take some appropriate action.

CONSTITUTION. The Constitution is the fundamental law of the state. Amendments to the Constitution must be approved by a vote of the people. No Act may legally be in violation of the provisions of the Constitution.

DRAFT. A draft is any piece of written legislation, at whatever stage of preparation, that has not yet been introduced as a bill or offered as an amendment.

ENGROSS. Engross means to incorporate the amendments and corrections into the text of the bill after a committee or either house has adopted it.

ENROLL. Enroll means to prepare a bill as an Act to be presented to the Governor after it has passed both houses.

HOGHOUSE. A hoghouse is a bill in which everything after the enacting clause has been deleted and new material substituted. This term is unique to the South Dakota legislative process.

HOUSE. When used generally, house refers to either the Senate or the House of Representatives. The term, the House, refers to the House of Representatives.

INTERNAL REFERENCE. An internal reference is a citation within the body of a bill to another section of the bill or an existing statutory provision.

INTERSTATE COMPACT. An interstate compact is legislation enacted in identical or very similar form by two or more states. Only changes which affect the internal operation of the compact within the state should be made in drafting an interstate compact, even though its style and form may vary from normal South Dakota usage.

JOINT RESOLUTION. A joint resolution is used primarily to propose amendments to the South Dakota Constitution and to ratify amendments to the United States Constitution.

LEADLINE. A leadline introduces a section in a bill which amends or repeals existing law or which contains new material that should be placed within a particular portion of the code.

MODEL LEGISLATION. Model legislation is suggested language for a bill published by interested parties. The drafting of model legislation requires the drafter to remove contradictory existing provisions that already exist in state law and to conform the model legislation to South Dakota style and form.

RESOLUTION OF DISAPPROVAL. A resolution of disapproval is used to suspend the operation of certain executive orders dealing with governmental reorganization.

SESSION LAWS. The session laws are a compilation of all Acts of the Legislature for a given session and include private, local, and special laws or appropriations which are not printed in the Code because of their temporary nature. These volumes also contain the text of each proposed amendment to the Constitution.

SIMPLE RESOLUTION. A simple resolution is a form of legislation initiated and passed in one house only and ordinarily expresses condolences, memorials, or the opinion of the single house.

SOUTH DAKOTA CODIFIED LAWS. The *South Dakota Codified Laws*, also known as the Code, is often abbreviated SDCL and is the current codification of South Dakota statutes of a general nature. It does not include appropriations, local, or special laws. SDCL is divided by subject matter into titles that are further divided into chapters and sections.

TITLE. Title may mean either a group of related chapters in the code or the title of a bill or resolution.

UNIFORM ACT. Uniform acts are suggested pieces of legislation published by the National Conference of Commissioners on Uniform State Laws in its annual handbook, and by the Council of State Governments annually in a volume entitled, *Suggested State Legislation*, or by the Uniform Laws Commission. The drafting of a uniform act may require a great deal of additional work on the part of the drafter to remove contradictory existing provisions that may already exist in state law, as well as minor style and format changes.

ESSENTIAL COMPONENTS OF A BILL

A properly prepared bill consists of:

- 1) A bill number;
- 2) Sponsorship;
- 3) A title;
- 4) An enacting clause; and
- 5) The body of the bill.

BILL NUMBER

The bill clerk in the Senate or House assigns the official sequential number at the time when the bill is actually introduced. In the case of pre-filing, when the bill is introduced prior to the start of the legislative session, the Director of the Legislative Research Council assigns the bill number.

Senate Bills begin with 1; House Bills begin with 1001. For that reason, the bill number also indicates the house of origin. It is nevertheless correct to refer to a bill by its complete number: for example, Senate Bill 39 rather than Bill 39.

SPONSORS

No draft may be introduced as a bill without at least one individual legislative sponsor or the sponsorship of a legislative committee. For that reason the names of one or more sponsors will appear on each bill. The sponsorship is placed on the first page of the bill immediately before the title.

Sponsors are listed in alphabetical order except that the prime sponsor in each house is placed first. There can be only one prime sponsor in each house. The names of all of the members of the house of origin are listed before the names of any sponsor in the other house.

In rare instances, there may not be a prime sponsor in the other house. In that case, the names of the co-sponsors in the other house simply appear in alphabetical order.

Following are examples of preferred usage:

The example below indicates that Smith is the prime sponsor in the house of origin and Green the prime sponsor in the second chamber. It also indicates the membership in the legislative body of a second Anderson whose name is spelled the same or similarly.

Introduced by: Senators Smith, Anderson (Peter), Brown, Johnson, Jones, and White and Representatives Green and Adams

If a member wishes to indicate that the introduction of a particular bill is at the behest of a constituent or other private person, the legislator may affix the term, by request, to the end of the introduction line. However, this is not frequently done.

Introduced by: Senator Gerhardt by request

Any bill introduced at the request of a department, board, commission, or other state agency must be prefiled as a committee bill and must indicate the name of the state agency at whose request the bill is being introduced.

Introduced by: The Committee on Health and Human Services at the request of the Department of Health

Introduced by: The Committee on Commerce and Energy at the request of the Electrical Commission

If requested by the Governor or the Chief Justice of the Supreme Court, a bill may also be introduced by a standing committee (SDCL 2-7-6.1).

Introduced by: The Committee on State Affairs at the request of the Governor

Introduced by: The Committee on Judiciary at the request of the Chief Justice

Once a bill is introduced, the sponsorship is final. No name may be added to or deleted from the sponsorship by amendment, even if the bill is amended in such a way that the sponsors no longer support the bill.

TITLE

Article III, section 21 of the State Constitution states that *“No law shall embrace more than one subject, which shall be expressed in its title.”*

The title should briefly summarize in a general statement the subject of the proposed legislation sufficient so that the reader can understand what the enactment of the bill will accomplish without reading the body of the bill.

The title should be broad enough so that a minor change to the specifics of the bill will not necessitate a title amendment.

Direct citations to existing laws should not be made in the title.

ACTIVE VERBS

The keystone of the title is the selection of active verb forms, which will express the purpose of the bill.

Some of the most useful of these active verb forms are as follows:

add	direct	permit	require
appropriate	establish	prohibit	retain
authorize	exempt	provide	revise
create	extend	reduce	subject
declare	increase	remove	transfer
define	limit	rename	update
delete	modify	repeal	

NECESSARY BILL PHRASES

If a bill includes an appropriation or if the bill is intended to be effective immediately upon final approval, or if it includes a substantial penalty provision, then use the following phrases:

- and to make an appropriation therefor
- and to declare an emergency
- and to provide a penalty therefor

The first two phrases alert the presiding officers of the necessity for a two-thirds vote on final passage. However, omission of a reference to the emergency clause in the title will not ordinarily affect the legality of the Act or render the emergency clause ineffective.

ENACTING CLAUSE

Article III, section 18 of the State Constitution requires that each bill introduced in the Legislature contain an enacting clause that must always read as follows:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

In the instance of popular legislation (initiated measures), Article III, section 1 of the State Constitution requires that the law contain an enacting clause that reads as follows:

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

The enacting clause of a bill always immediately follows the title. Any legislative amendment to delete the enacting clause has the effect of killing the bill.

BODY OF THE BILL

INTENDED PURPOSE

The body of the bill sets forth the material intended to be enacted. The purposes may be one or any combination of the following:

- enactment of new substantive law
- amendment of existing law
- appropriation of funds
- adoption of new material to a specific chapter
- repeal of existing law

Less frequently the purpose of a bill may be:

- adoption, amendment, or repeal of an administrative rule
- validation or ratification of some governmental action
- impeachment

SINGLE SUBJECT

If any question arises as to whether a bill embraces two different subjects, it is better to draft separate bills than to include provisions of questionable relationship under a single title.

BILL SECTIONS

The body of the bill should be divided into sections of convenient length. Short sections facilitate reference to particular provisions. Generally, each distinct proposition should be in a separate section, which, in turn, may be divided into subdivisions, if necessary. The sections in the body of the bill should be identified as follows: Section 1, Section 2, etc.

The body of the bill may contain any number of sections and provisions, so long as each section relates to the single subject expressed in the title and is germane to the subject of the bill.

CATCHLINES

The material in the *South Dakota Codified Laws* at the beginning of each section following the section number is called the catchline. The catchline is designed to summarize the statutory material. It is not a part of the law and **not** included in the bill. Moreover, the drafter may not assign statutory section numbers and subdivision designations to new substantive legislation. Assignment of statutory section numbers is solely a function of the South Dakota Code Counsel.

COMMON COMPONENTS OF A BILL

Common components of a bill draft are as follows:

DEFINITIONS

DEFINITIONS OF CONVENIENCE

It is frequently desirable to define words in a bill to assure complete clarity and precision of meaning. Definitions are also useful to avoid repetition.

If, however, a word has a clear, definite meaning, a definition is unnecessary and might even cause confusion. Beyond this, the statutes provide that each word should ordinarily be construed according to the common and approved usage of language.

Finally, many words are already defined by statute (SDCL 2-14-2) and apply to each law unless the context plainly requires otherwise or the Legislature has otherwise established a special definition.

WORDS AND TERMS DEFINED UNDER SDCL 2-14-2 INCLUDE:

according to usage	State
adult	testify
children	third persons
compound interest	township boards
corporate surety	usual and customary
creditor	valuable consideration
day	verdict
debtor	voter
decree	will
depose	writing, written
folio	year
full-time equivalent or FTE	
good faith	
Indian tribe	
month	
municipality	
oath	
person	
personal property	
population	
property	
real property	
seal	
several	
signature or subscription	

If a section containing definitions is needed, the definition section should follow substantially the following form:

Section 1. Terms used in this Act mean:

- (1) "Department," the Department of Agriculture;
- (2) "Insects," all arthropods, mollusks, and annelid worms except those which produce disease in man; and
- (3) "Secretary," the secretary of the Department of Agriculture.

In the example above, it is obvious that the term, insects, is not given its correct scientific definition. This illustrates precisely the utility of a proper definition of convenience. Here a specific grouping of diverse biological forms is somewhat arbitrarily, but quite precisely, made reference to by means of a single, specially defined word.

ACRONYMS

An acronym may be used in drafting if it is so widely used that readers are more likely to recognize the acronym than the full term. For example, you may use HIV and AIDS. If an acronym appears in a standard dictionary, that is often a good indication of its wide use. If an acronym is used, it must be defined. Place the definition of an acronym in alphabetical order according to the letters in the acronym, and not according to the words for which the letters stand.

TERMS TO AVOID

Never use the term being defined in its own definition.

Also, never include "unless the context requires otherwise". This makes it very unclear as to when the definition is being used and when it is not being used.

DEFINITIONS OF LEGAL SUBSTANCE

If a definition constitutes substantive law, it should not be placed in a definition section. The following example illustrates this point.

Section 4. That chapter 13-37 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, an exceptional child is any person under the age of twenty-one years who is a resident of South Dakota and who because of any physical or mental condition is not adequately provided for through the usual facilities of a public school.

This is not a mere definition of convenience but a substantive legal formulation upon which rights and responsibilities depend. One of the most common drafting errors is to treat these substantive legal formulations as definitions of convenience.

PENALTIES

A bill requiring or prohibiting certain actions ordinarily provides criminal penalties for violations. The bill should classify the violation as one of the existing classes of felonies or misdemeanors, or as petty offenses. This eliminates the need to specify the punishment and provides consistency within the code. The current classifications of penalties are as follows:

FELONIES (See SDCL 22-6-1)

- (1) Class A felony: death or life imprisonment in the state penitentiary. A lesser sentence than death or life imprisonment may not be given for a Class A felony. In addition, a fine of fifty thousand dollars may be imposed;
- (2) Class B felony: life imprisonment in the state penitentiary. A lesser sentence may not be given for a Class B felony. In addition, a fine of fifty thousand dollars may be imposed;
- (3) Class C felony: life imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;
- (4) Class 1 felony: fifty years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;
- (5) Class 2 felony: twenty-five years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;
- (6) Class 3 felony: fifteen years imprisonment in the state penitentiary. In addition, a fine of thirty thousand dollars may be imposed;
- (7) Class 4 felony: ten years imprisonment in the state penitentiary. In addition, a fine of twenty thousand dollars may be imposed;
- (8) Class 5 felony: five years imprisonment in the state penitentiary. In addition, a fine of ten thousand dollars may be imposed; and
- (9) Class 6 felony: two years imprisonment in the state penitentiary or a fine of four thousand dollars, or both.

MISDEMEANORS (See SDCL 22-6-2)

- (1) Class 1 misdemeanor: one year imprisonment in a county jail or two thousand dollars fine, or both; and
- (2) Class 2 misdemeanor: thirty days imprisonment in a county jail or five hundred dollars fine, or both.

PETTY OFFENSES (See SDCL 23-1A-22)

If the plaintiff prevails in a petty offense case, the plaintiff is granted a judgment of twenty-five dollars. If the plaintiff prevails in a petty offense case under § 32-26-47 (*the ban on texting while driving*), the plaintiff is granted a judgment of one hundred dollars. However, the trial court may reduce or eliminate the award in the interest of justice. No award may be granted a defendant in a petty offense case.

DETERMINING THE APPROPRIATE PENALTY

The following guide may assist the drafter in determining an appropriate penalty for the violation of the law. A Class 2 misdemeanor will be the appropriate penalty in most cases.

Felonies:

- Serious injury to persons or property.

Class 1 misdemeanors:

- Minor injury to property.

Class 2 misdemeanors:

- Failure to carry out a mandatory duty.
- Violations of an agency rule or regulation.
- Violations of health or safety laws.

Petty offenses:

- Nuisances that are annoying but which cause no serious injury.

IDENTIFYING THE PENALTY

Always place the penalty in the section in which the required or prohibited action is described by adding a sentence such as:

"A violation of this section is a Class 2 misdemeanor."

PRISON POPULATION COST ESTIMATE (See SDCL 2-1-19)

Any bill or amendment that impacts the population of a state prison or county jail requires a prison population cost estimate. The requirement applies if the bill or amendment increases the period of imprisonment authorized for an existing crime, adds a new crime for which imprisonment is authorized, imposes a minimum or mandatory minimum term of imprisonment, or modifies any law governing the release of a prisoner from imprisonment or supervision. The statements are prepared by the Legislative Research Council or the Bureau of Finance and Management, and need to be completed before the bill may be heard by a committee.

CIVIL PENALTIES

A civil penalty is a financial payment assessed by a court or state agency for violation of a statute or regulation. It is primarily sought to compensate the state for harm done to it. Any bill including a civil penalty should indicate who is assessing the civil penalty and also where any civil penalty collected will be deposited. It should also include a limit on the amount of the penalty. A good example of a section of law containing a civil penalty is as follows:

37-25A-55. Civil penalty. The director may impose a civil penalty against a person named in an order issued under § 37-25A-30 for violation of §§ 37-25A-7, and 37-25A-43 to 37-25A-46, inclusive. The amount of the civil penalty may not exceed five thousand dollars for each act or omission that constitutes the basis for issuing the order. Any civil penalty collected pursuant to this section shall be deposited into the state general fund. The civil penalty may only be imposed:

(1) Following an opportunity for a hearing under § 37-25A-30 if notice delivered to all named persons includes notice of the director's authority to impose a civil penalty under this section; or

(2) As part of an order issued pursuant to subdivision 37-25A-30(1) if the order is stipulated to by each person subject to the civil penalty.

EFFECTIVE DATES

IN GENERAL

Any Act of the Legislature which does not prescribe when it takes effect, if passed at the regular session, takes effect on the first day of July after its passage.

EMERGENCY

An emergency clause gives effect to an Act of the Legislature immediately upon approval by the Governor. **If a bill contains an emergency clause, the bill requires concurrence by two-thirds of the members of each house and must be a true emergency.** The emergency clause is used for (1) the support of state government; or (2) the immediate preservation of public peace, health, or safety.

To determine what the courts have considered a justifiable emergency, study the annotations following section 1 of Article III of the State Constitution.

The title of the bill should make reference to the fact that an emergency clause is in the bill. An emergency clause, when required, should be the last section of the bill, in one of the forms listed below.

Bills relating to taxation, the raising of revenue, or appropriations should use the following "support of state government" form:

For the Support of State Government

Section 10. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Bills that are regulatory in nature should use the "preservation of public peace" form as follows:

For the Immediate Preservation of Public Peace, Health, or Safety

Section 20. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

DELAYED IMPLEMENTATION

It is not uncommon to wish to delay the implementation of an Act until some later date. This may be accomplished by means of a delayed implementation clause shown below.

Section 30. This Act is effective on January 1, 2020.

The delayed implementation clause can apply to the entire Act (as shown above) or it can apply to only certain sections (as shown below). If the delayed implementation clause applies only to certain sections of the Act, the other sections take effect on July first of the year of passage unless otherwise stipulated.

Section 40. Sections 27 to 39, inclusive, of this Act are effective on January 1, 2019.

SUNSET PROVISIONS

It is also possible to require an Act or sections of an Act to be sunsetted (or repealed) on a certain date:

Section 35. The provisions of this Act are repealed on June 30, 2021.

CODE COMMISSION AUTHORIZATION CLAUSE

If a bill requires changes in many sections of the code, it may be best to authorize the Code Commission to implement the change. For example, if you wanted to change the name of the office of "state's attorney" to "counsel for the county," you would make an amendment for the code section in which the office is statutorily created and, at an appropriate place in the bill, include a section to this effect:

Section 13. The term, state's attorney, wherever it is used in this code means counsel for the county. The code commission in future supplements and revisions of the South Dakota Codified Laws shall substitute the term, counsel for the county, and its derivatives for the term, state's attorney, and its derivatives.

It is important to remember that the Code Commission is not directly granted the authority to make the change, but rather the change is created by statute and then the authority to implement that change is granted to the Code Commission.

RARE COMPONENTS OF A BILL

The following bill components are sometimes seen in other states. They are generally avoided in this state, but may be used in rare instances.

DECLARATION OF PURPOSE

A declaration of purpose is strongly discouraged and is rarely useful. A well drafted bill should not need a declaration of purpose.

However, if a statement of policy or purpose is to be included, it is ordinarily the first section of the bill and should be short and concise. An improperly worded statement of purpose may cause serious problems of judicial interpretation. If such a statement is used, it might appear in the following form:

Section 1. In enacting legislation to provide loans and scholarships for the study of medicine, it is the intention of the South Dakota Legislature to alleviate the shortage of physicians.

LEGISLATIVE FINDINGS

The Legislature cannot alter past events or scientific facts by passing a law. However, if construction of a statute depends on a factual situation, the Legislature may wish to present its understanding of the situation in a "finding of fact" section. If such a statement is needed, it might appear in the following form:

Section 1. The Legislature finds that the Lakota, Nakota, and Dakota dialects of the Sioux Language are historically unwritten languages and are defined as such by the provisions of Public Law 94-73 as of January 1, 2000.

RETROACTIVITY

On rare occasions there is a need and justification to make an Act effective retroactively. From a legal standpoint, it is necessary to remember that only benefits may be constitutionally conferred retroactively. No duty or obligation may be imposed retroactively. The following clause is an example:

Section 11. Each benefit provided by this Act applies to the surviving beneficiaries of each member of the retirement system who has died since July 1, 2015.

SEVERABILITY CLAUSES

Although severability clauses are frequently encountered in the laws of other states, they are typically not included in any South Dakota bill. Severability is a long-established doctrine of the Supreme Court of South Dakota, sometimes called "the doctrine of separability." The Court is required to uphold any part of a legislative measure that will stand on its own without the part that is unconstitutional. See State ex rel Mills v. Wilder (1950), 73 SD 330, 42 N.W. 2d 891, and Nelson et al v. City of Miller (1968), 83 S.D. 611, 163 N.W. 2d 533.

If a uniform or model act contains a severability clause, the severability clause may be retained to maintain uniformity among the states.

INSEVERABILITY CLAUSES

Occasionally, the reverse situation may exist. It may be desirable to indicate that parts of the bill are not intended to be severable. In such a case, a section should be inserted to reverse the presumption of severability:

Section 7. The provisions of this Act are essentially and inseparably connected and interdependent.

SHORT TITLES

The use of short titles in a bill is also a common practice in some other states, but in South Dakota is inconsistent with the practice of codification and discouraged. An exception may be made for Uniform State Laws, because a short title for a uniform act indicates that courts in other states may have already construed the provision.

COMPENSATION FOR COMMISSION MEMBERS

The Legislature does not attempt to set per diem and expense allowances of existing boards or commissions in legislation other than the General Appropriations Act. For newly created boards and commissions, the appropriations committee can temporarily set the rates during its interim meetings between sessions.

APPROPRIATIONS

Article 12, section 2 of the State Constitution provides that only the regular, ongoing expenses of state government are to be funded through the General Appropriations Act. Any money not appropriated through the General Appropriations Act must be appropriated in special appropriations bills.

In any special appropriations bill, the method of financing should be stated as a separate section. The appropriation section should state the officer or agency to which the appropriation is made, its amount, the period for which it is to be used, and the source. However, the exact amount of the appropriation should not be stated in the bill's title. In the case of some boards and commissions, it may be desirable to clearly state the officer who is to approve payments from the appropriation.

The elements of most appropriations bills are very similar. As a result many appropriation drafts can almost be described as filling in a blank form. A blank appropriation bill form is shown below. Follow it closely when drafting special appropriations bill, and avoid using terms such as "authorized to expend" when the term "appropriate" may be used.

<p>Section 1. There is hereby appropriated from the _____ fund the sum of _____ (\$ _____), or so much thereof as may be necessary, to the _____ for _____.</p> <p>Section 2. The _____ shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.</p> <p>Section 3. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.</p>

RESOLUTIONS AND COMMEMORATIONS

Resolutions, in their several forms, are expressions of the opinion, sentiment, or will of the Legislature. There are four types of resolutions: joint, concurrent, simple, and resolutions of disapproval. The joint rules also provide for a special type of less formal resolution called a commemoration. Each type of resolution has unique qualities.

JOINT RESOLUTIONS

A joint resolution is used for consideration of certain special types of legislation. It is used for proposing amendments to the State Constitution. It is also customary to use a joint resolution to ratify or propose amendments to the United States Constitution and to place measures on the ballot.

CONCURRENT RESOLUTIONS

A concurrent resolution expresses the opinions of the Legislature, but it does not have the force of a statute. It may be used to request interim studies, memorialize or instruct a department of state government, or petition federal officials or agencies.

SIMPLE RESOLUTIONS

A simple resolution is intended to be acted upon by only one house, and requires action only by the house concerned. It is used to express an opinion or principle of one house, express an opinion or request to the other house, or regulate its own procedures or conduct. In some cases, especially when time is of the essence, a simple resolution is introduced in identical form in each house, in which case the two simple resolutions have virtually the same effect as a concurrent resolution.

RESOLUTIONS OF DISAPPROVAL

A resolution of disapproval is similar to a joint resolution. It permits the Legislature to disapprove of any executive order reorganizing state government that was issued during the preceding year.

COMMEMORATIONS

A commemoration expresses legislative recognition and is not voted on. Instead, if any member makes a timely objection to a commemoration, the commemoration fails. Therefore, commemorations should deal only with the most uncontroversial of subjects, such as congratulations or condolences, expression of gratitude, or recognition of a special event or celebration.

DRAFTING RESOLUTIONS AND COMMEMORATIONS

Most concurrent or simple resolutions consist of a title, a preamble, and a body.

The title states the type and subject of the resolution. It should be clear and concise giving an accurate description of the resolution's contents.

The preamble is a series of "*Whereas*" clauses which describe the situation or conditions for which the resolution proposes action. Language in a preamble may be more literary or rhetorical than would be appropriate in other forms of legislation.

A joint resolution does not ordinarily contain a preamble.

The preamble of a commemoration should not contain more than three short "*Whereas*" clauses since commemorations are usually enrolled as one-page documents suitable for framing.

The body of a resolution is actually the closing, or resolving clauses, which prepare action or express the opinion of the Legislature.

PROPER FORM AND STYLE IN BILL DRAFTING

MAINTAINING CONSISTENCY

When it comes to bill drafting, consistency is key. Consistency, rather than variety, in language, organization, and arrangement is a prime rule in good bill drafting. **The same word or phrase should be used to denote the same thing throughout a bill.** New language should utilize the same terms used in the statutes to which it is added.

Terms that are defined in a bill should be repeated exactly and without variation in each portion of a bill following the definition. Sections similar in substance should be similarly arranged and outlined.

By following the rule of consistency, the drafter eliminates to a great extent the danger of misinterpretation and disagreement over the contents of the bill. The use of synonyms, merely for the sake of variety, leads to the possibility of divergent constructions of the language or at least uncertainty as to why the synonym was used.

Correct If a student has been assigned by the school board of the district where the student has a school residence or has been assigned as provided by statute, the school board shall pay the student's tuition.

Incorrect If a student has been assigned by the school board of the district where the child has a school residence or has been assigned as provided by the statute, the school board shall pay the pupil's tuition.

AMENDING EXISTING STATUTES

When amending existing statutes, the parts that are to be omitted must be shown as overstricken and any new material must be shown underscored. **New material always follows the stricken material for which it is being substituted. Do not reverse the order.**

If the material to be stricken consists of more than one sentence, the new or underscored material replacing the old or stricken material should be inserted at the end of the sequence of stricken material. Periods should logically be carried to the end of the sentence where new material is being inserted and treatment should be the same as in simple amendments where new material is inserted after a specified word and before the period.

Never overstrike or underscore part of a word, number, or citation:

- not ~~animals~~, but ~~animal~~ animals
- not § ~~32-14-79~~ 87, but § ~~32-14-79~~ 32-14-87
- not ~~forty-five~~, but ~~forty~~ five forty

When amending or repealing, use an appropriate leadline for each section of the bill:

"That § 2-23-71 be amended to read:"

"That § 2-23-71 be repealed."

"That chapter 2-23 be amended by adding a NEW SECTION to read:"

Sections that are to be repealed should ordinarily be printed with the entire wording overstricken.

Sections that are entirely new material should not be underscored. The leadline will indicate that it is a new section.

Ordinarily, sections of a bill amending or repealing code sections should appear in numerical order. If, however, the bill is easier to understand or follow, the order in which the sections appear in the bill may be altered. If the proposed bill is a major revision or cleanup, the sections to be repealed may be collected and repealed in a concluding bill section.

NUMBERING STATUTORY MATERIAL

The basic working unit of the *South Dakota Codified Laws* is the section. A group of related sections form a chapter; and a group of related chapters form a title. Ordinarily, sections are not broken down into smaller units. When this does occur the resulting unit is called a subdivision. In the rare event that a subdivision is divided, the resulting unit is called a subsection.

A sample citation for a subsection might be subsection 77-3-31(2)(b).

- 77 is the title
- 3 is the chapter
- 31 is the section
- (2) is the subdivision
- (b) is the subsection

Graphically this arrangement could be represented as follows:

77-3-31. Introductory material:

- (1) Subdivision;
- (2) Subdivision;
 - (a) Subsection;
 - (b) Subsection; and
 - (c) Subsection; and
- (3) Subdivision.

Subdivisions are sometimes overused. Unless subdivisions significantly contribute to the clarity of the statute, try to avoid the use of subdivisions.

The federal drafting style, which is also used in a number of states, assigns a subdivision designation to each paragraph of any multiparagraph section. This practice is not used in South Dakota, and it is not needed since most sections do not contain more than one paragraph.

USING APPROPRIATE LANGUAGE AND WRITING STYLES

IMPERATIVE, PERMISSIVE AND PROHIBITIVE CONSTRUCTION

The verbs used in legislation should be active and in the present tense. Verbs are generally imperative, permissive, or prohibitive. This is a guide to usage:

shall	=	required action
may	=	permitted action
may only	=	restricted permitted action
may not	=	prohibited action
must	=	action required as a condition of something; used with inanimate subjects
must be	=	required condition
is	=	statement of condition

Legislation giving discretion to an officer or board through the use of "may" must also establish guidelines to be followed in exercising that discretion. A negative used with "may" negates the obligation and permission to act and is the stronger prohibition. A negative used with "shall" negates the obligation, but not the permission, to act and therefore should be avoided.

Correct	The term, commission, means the water commission.
Incorrect	The term, commission, shall mean the water commission.
Correct	The capital of the state is Pierre.
Incorrect	The capital of the state shall be Pierre.

Do not use the word "shall" to confer a right because, in that case, the use of "shall" implies a duty to enjoy the right.

Correct	The secretary's annual salary is twenty-one thousand dollars.
Incorrect	The secretary's annual salary shall be twenty-one thousand dollars.

ACTIVE VOICE

Use the active voice whenever possible. The use of the active voice automatically identifies the principal actor -- the person or entity who has a power, privilege, or duty -- as the subject of a sentence, logically followed by the mandate imposed. The passive voice, however, must be used when unidentified principals are involved, and it may be used when use of the active voice would cause awkwardness of construction.

Correct	The board shall appoint a director.
<i>Incorrect</i>	A director shall be appointed by the board.

Impersonal constructions should also be avoided.

Correct	The board shall appoint a director.
<i>Incorrect</i>	It is the duty of the board to appoint a director.

Do not use a negative subject with an affirmative "shall."

Correct	No person may
<i>Incorrect</i>	No person shall

SINGULAR SUBJECT

Use the singular instead of the plural. SDCL 2-14-6 provides that words used in the singular number include the plural.

Correct	A defendant in a criminal action is presumed innocent until the contrary is proved.
<i>Incorrect</i>	Defendants in criminal actions are presumed innocent until the contrary is proved.

TIME

Use the present tense. The present tense is the most natural and simplest form of expression. SDCL 2-14-7 provides that words used in the present tense include the future as well as the present.

Correct	A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether guilt is satisfactorily shown, the defendant is entitled to an acquittal.
Incorrect	A defendant in a criminal action shall be presumed to be innocent until the contrary shall be proved, and in case of a reasonable doubt whether guilt shall be satisfactorily shown, the defendant shall be entitled to an acquittal.

ABBREVIATIONS

Abbreviations should not be used in drafting a bill. In particular, the word "title" or "chapter" or the symbol "§" should be used in the body of the bill rather than SDCL.

CAPITALIZATION

The policy of the Legislature is to encourage normal capitalization usage; the guidelines of the *Chicago Manual of Style*, thirteenth edition, may be used as a general model.

Capitalize proper names in the text of a bill.

Capitalize officially titled state or federal acts. For example, Securities and Exchange Act of 1934; South Dakota Human Relations Act of 1972. Before capitalizing the name of a particular state act, check the *South Dakota Codified Laws* to be sure it does have a specific name; for example, see SDCL 20-13-56. On the other hand, a reference to laws on a particular subject, such as "insurance statutes," is not capitalized.

The full proper name of a department or a governmental agency or institution is capitalized as below:

Department of Revenue
University of South Dakota
Hughes County Commission
Environmental Protection Agency
Board of Pharmacy

Human Services Center
Division of Insurance
Supreme Court
Legislature
Governor

These references, however, do not require capitalization:

department	agency
university	board
county commission	division

The titles of smaller offices or programs within departments are **not** capitalized.

The titles of state, county, municipal, or district officials are **not** capitalized:

secretary of state	mayor
secretary of agriculture	supervisor
county commissioner	

The full title of a fund is **not** capitalized:

motor vehicle fund
Unified Judicial System court automation fund
water and environment fund

Substitutions for official titles, such as "secretary" or "director," are **not** capitalized.

The words "title," "article," "chapter," "section," or "rule" are **not** ordinarily capitalized.

USE OF EXAMPLES

Well-drafted legislation should be understandable without the use of examples. Especially objectionable is the use of phrases like "**including . . .**" or "**including, but not limited to . . .**" Such partial listings always raise more questions than they resolve about why certain items are included or omitted from such lists.

GENDER

If the proposed law is intended to apply to persons of both sexes, it is best to use gender-neutral terms, such as "applicant," "licensee," or "person" in bill drafting. Avoid the use of pronouns altogether, by substituting their antecedents, so the phrase "He shall file . . ." might read "The licensee shall file . . ." Often a sentence may be rewritten to avoid a construction requiring a pronoun.

Never use the phrases "he or she" or "him or her" as in "he or she shall file . . ." Do not use "they" or "their" as a singular subject. These are awkward and incorrect. If the antecedent can, for biological reasons, only be masculine or feminine, the masculine or feminine pronoun may be used.

HYPHENATION

Frequently used words that should be hyphenated include:

one-half
three-tenths

non-ad valorem

Do not hyphenate:

ex parte
interstate
intrastate
nonresident
percent

prima facie
pro rata
prorate
statewide
vice president

NUMBERS

Most numbers used in the body of proposed legislation, including sums of money, should be written rather than indicated by numerals:

. . . within ten days . . .
. . . fined not less than twenty-five dollars . . .
. . . is fixed at one thousand two hundred dollars . . .

Common exceptions to this rule might be dates, formulas, and numerals used in tables. Moreover, in special appropriations, it is correct to use both the written and the numerical form in tandem as follows: "...appropriates seven thousand thirty-one dollars and twelve cents (\$7,031.12)..."

USING PROPER PUNCTUATION

The use of punctuation in bill drafting is not different from correct formal usage. Some rules to be observed in the use of punctuation include:

- Do not use a colon except to introduce a series of subdivisions;
- In a series of subdivisions following a colon, use a semicolon at the end of each provision;
- The comma or period is placed inside a quotation mark but other punctuation marks are placed outside unless part of the quotation;
- In the preamble to a concurrent or simple resolution or in the preamble to a commemoration use a comma after the word "Whereas," and use a semicolon at the end of each clause.
- Only use parentheses to surround numerals in special appropriations bills.

Generally speaking, the use of short, simple sentences is best. Using complex sentences often requires excessive punctuation which can be confusing and lead to possible misinterpretation.

REFERRING TO EXISTING LAW

References to existing law will usually be to the *South Dakota Codified Laws*. Within the body of the bill, the abbreviation SDCL is not used. The section symbol (§) or the words "chapter" or "title" should be used as appropriate.

Although Session Laws are not frequently amended, Session Laws may be cited as "chapter 176 of the 1999 Session Laws."

Laws passed earlier in the current session are cited as "Senate Bill 61, as previously enacted by the Seventy-third Session of the South Dakota Legislature."

The Constitution should be cited as "S.D. Const., Art. XVIII, § 8."

Internal references to other sections of the same bill may be cited as "pursuant to section 4 of this Act," but as noted below should be used with caution.

USING INTERNAL REFERENCES

When drafting a bill, avoid the use of internal references. If used, they can complicate the amendment process and cause errors since they are easily overlooked. Also, remember that if you are drafting a bill that repeals an existing statute, it is important to look for other existing statutes that refer to the statute being repealed. Those statutes will also need to be amended to reflect the repeal.

WORD PREFERENCES

The wording of legislation should be precise, clear, and concise. Avoid both conversational and legalistic expressions. Use shorter, simpler words if there is a choice. The following words or phrases are often incorrectly used in drafting and can usually be replaced by a better word or phrase:

AVOID

absolutely null and void
aforesaid, aforementioned
before-mentioned
afforded or accorded
and/or
any and all
as provided in this Act

at such time as
at the time of
at the time of the person's death
attorney and counselor at law
authorize and empower
be and the same is hereby
bonds, notes, checks, drafts
other evidences of indebtedness
bring an action
can
carry out
constitute and appoint
deal with
deem
deemed to be
deemed to include
during such time as
during the course of
each and every
either directly or indirectly
employ (meaning to use)
enter into a contract with
every person, all persons
examine witnesses and hear testimony
except as otherwise provided
expend
fail, refuse, or neglect
feasible
following section
formulate

PREFERABLE

void
"the," "that," or "those"

given
"either A or B, or both,"
any
(use only if necessary to avoid
confusion)
when
when
when the person dies
attorney
authorize
is
evidence of indebtedness

sue
may
"execute" or "complete"
appoint
"address" or "conduct"
consider
is
includes
while
during
each
(delete entirely)
use
contract with
any person
take testimony
(delete entirely)
spend
fail
practicable
"section 3 of this Act"
make

AVOID

For the duration of
for the reason that
forthwith
from and after
from July first
full and complete
give consideration to
give recognition to
have knowledge of
have need of
hereinafter, hereinbefore,
 hereinabove, above, below
 following, preceding

in case
in cases in which
in order to
in the event that
in the interests of
inquire
is able to
is applicable
is authorized to
is binding upon
is defined and shall be construed
 to mean
is dependent on
is directed to
is empowered to
is entitled to
is hereby authorized and it
 shall be his duty to
is required to
is unable to
it is a person's duty to
it is lawful to
law passed
make application
make a determination
make payment
make provision for
matter transmitted through the mail
maximum
means and includes

PREFERABLE

during
because
immediately
after
after June thirtieth
full
consider
recognize
know
need
(these are objectionable when
referring to the position of a
section or other statutory provision;
if reference is necessary, specify
the chapter, paragraph, section or
subsection)
if
if
to
if
for
ask
can
applies
may
binds
means

depends on
shall
may
may
shall

shall
cannot
shall
may
law enacted
apply
"determine" or "decide"
pay
provide for
mail
most
means

AVOID

member of a partnership
modify
must (in most instances)
no later than June thirtieth
none whatever
not later than
null and void
occasion (as a verb)
of a technical nature
on or after July first
on a person's own application
ordered, adjudged, and decreed
or, in the alternative,
party

per annum
per centum
per day
per foot
period of time
prior to
prosecute its business
provided (conjunction)
provided, however

provision of law
purchase
render (meaning "to give")
render (meaning "to make")
retain
rules and regulations
said
same
shall be construed to mean
shall be deemed to be
shall have the power to
shall not
should
sole and exclusive
State of South Dakota
subsequent to
suffer
terminate
to wit
under the provisions of
unless and until

PREFERABLE

partner
change
shall
before July first
none
before
void
cause
technical
after June thirtieth
upon request
ordered
or
person (unless referring to a party to
a suit)
a year
percent
a day
a foot
period
before
conduct its business
"if" or "but"
"except," "but," or "however"
or start a new sentence
statute
buy
give
make
keep
rules
"the," "that," or "those"
(appropriate noun or pronoun)
means
is
may
may not
shall
exclusive
State
after
allow
end
(delete or use "namely")
pursuant to
"unless" or "until"

AVOID

until such time as
utilize (meaning to use)
whatsoever
when, where (as a condition)
whenever
wheresoever
whosoever

PREFERABLE

until
use
whatever
(usually means "if" in legislation)
"when" or "if"
where
whoever

AVOIDING CERTAIN DESCRIPTORS AND PHRASES

Do not use adjectives such as "real," "true," and "actual," and adverbs such as "duly," and "properly." Since these ideas are normally implied, expressing them creates doubt about whether they are implied elsewhere.

Do not use "adequate," "sufficient," "promptly," "approved," or "reasonable" unless you specify what these words mean or refer to the standards that must be met.

When assigning a duty to a specific person, avoid adding a phrase such as "or his designee" to the assignment. This is unnecessary. The person to whom the duty is assigned may assign the duty to another person **unless** it is specifically prohibited in the language of the bill. Therefore, for example, if you want to require "the secretary" to "conduct the meeting," you need to say "only the secretary may conduct the meeting". Otherwise, "the secretary" is free to assign the conduct of the meeting to someone else.

USING "PERSON" OR "INDIVIDUAL"

Use "person" if you want to apply a provision to human beings and nonhuman entities such as corporations and governmental bodies.

Use "person" if you want to apply a provision only to human beings and the context clearly indicates that the application only applies to human beings.

Use "individual" if you want to apply a provision only to human beings, and it is not clear from the context that the application only applies to human beings.

USING "THAT" OR "WHICH"

Use "that" to restrict or limit, or describe or define, the word being modified in the sentence. In other words, use "that" to include information that is necessary to identify the word being modified.

Example: A fence that conforms with § 43-24-5 is a legal fence.

Use "which" to add nonessential information about the word being modified. Since a good bill draft rarely includes nonessential information, "which" is not often used.

Example: The landowner shall build a fence, which may be a legal fence, within thirty days after receiving a permit.

AMENDMENTS

Amendments are an essential part of the legislative process because amendments allow the alteration of bills and resolutions after introduction. **The principles of style and form that apply to bills also apply to amendments.**

In drafting amendments, imagine giving instructions to a secretary for alterations in a bill. Although some amendments may be pages long and make dozens of changes, the basics of each amendment never change; identify the following:

- the legislation to be amended (bill number)
- the version of the legislation (printed or engrossed)
- the place in the bill where the change will occur (page number and line number)
- the change itself

Amendments may be offered on the floor, in committee, or in conference committee. Bills, including bill titles, any form of resolution, and previous amendments may be amended. But no matter what the circumstances, the basic amendment form remains unchanged.

AMENDMENT EXAMPLES

The following examples illustrate the variety -- as well as the essential uniformity -- of amendments:

The amendment below illustrates the correct way to amend new material within a bill. Since the new material is not currently in statute, overstrikes and underscores are not used.

_____ moved that SB 247 be amended as follows:

On page 3, line 5 of the printed bill, delete "is hereby authorized" and insert "may".

The amendment below illustrates the correct way to amend existing statutes within a bill. Since it is existing statutory language, overstrikes and underscores are used. It is incorrect to use deletions and insertions when amending existing statutes.

_____ moved that SB 191 be amended as follows:

On page 3, line 20 of the printed bill, overstrike "five" and insert "ten".

The amendment below restores a current statutory provision to its original form.

_____ moved that SB 307 be amended as follows:

On page 2, line 18 of the printed bill, remove the overstrikes from "~~commission shall~~" and delete "department may".

The amendment below is commonly called a hoghouse amendment because it deletes the entire content of the existing bill and replaces it with new material.

_____ moved that SB 189 be amended as follows:

On the printed bill, delete everything after the enacting clause and insert:

"Section 1. That § 67-7-31 be amended to read as follows:

67-7-31. The sunflower, ~~dandelion~~, wild plum blossom, salsify, yucca, and wild rose are designated honorary state flowers."

The amendment below is for a bill that has already been amended in committee. Note that the version of the bill is identified as the "Senate Transportation committee engrossed bill." Always be careful to prepare an amendment for the most current version of a bill.

_____ moved that SB 34 be amended to read as follows:

On page 1 of the Senate Transportation committee engrossed bill, delete lines 6 to 13, inclusive.

The amendment below places a new section between two existing lines in the bill rather than at the end. Doing so may be useful in keeping the bill material in a logical sequence, but it can also require internal references to be amended, which can be tricky at times. (See note following.)

_____ moved that SB 271 be amended to read as follows:

On page 4 of the printed bill, between lines 14 and 15, insert:

"Section 8. The commission shall cooperate with the Department of Agriculture in performing the duties assigned pursuant to section 7 of this Act."

SECTION RENUMBERING

The LawMaker system used by the LRC automatically renumbers each section when the bill is engrossed. Therefore, when amending entire sections out of or into a bill, never draft amendments in a manner that provides for the renumbering of existing bill sections since that will be done automatically.

INTERNAL REFERENCES

When drafting a bill, avoid the use of internal references. If there are numerous internal references in the bill, it is recommended that new sections be added to the end of the bill. If the new sections are not added to the end of the bill, special care must be taken to prepare amendments that reflect all the necessary changes to the section number references in the bill.

RULE-MAKING AUTHORITY

ADMINISTRATIVE PROCEDURES ACT (SDCL 1-26)

In many instances any legislation of substantial scope must be administered either by some agency, board, or commission. The provisions of the Administrative Procedures Act found in SDCL 1-26 should be used to avoid unnecessary repetition and to provide uniformity for the rule-making procedure of state agencies, for hearings, and for appeals to the courts.

RULES FOR NEW PROGRAMS

If a special appropriations bill establishes a new program, authority to promulgate rules should be considered in the areas of eligibility for funds, audit requirements, or standards for distributing the funds. The important issues to be determined in this area concern how the funds are to be spent and whether additional conditions are to be imposed concerning the distribution of the funds.

NARROW AND SPECIFIC RULE-MAKING AUTHORITY

Authority to allow an agency to promulgate rules should be narrowly drawn. A statement such as "The department may promulgate rules to implement this chapter" is a grant of rule-making power without standards and is an unconstitutional delegation of legislative authority. Instead, determine what rules the agency needs and draft **specific** rule-making authority accordingly. For example:

Section 10. The secretary of the Department of Public Safety shall promulgate rules, pursuant to chapter 1-26, in the following areas:

- (1) Definitions;
- (2) Commercial driver license waivers;
- (3) Single license requirement;
- (4) Notification requirements and employer responsibilities;
- (5) Federal disqualifications and penalties;
- (6) Testing and licensing procedures;
- (7) Vehicle groups and endorsements;
- (8) Required knowledge and skills;
- (9) Tests;
- (10) Commercial driver license document; and
- (11) Other rules necessary to implement the provisions of C.F.R. 49, Chapter 3, Subchapter B, parts 383, 384, 390, 391, and 392, inclusive, January 1, 1990, as of January 1, 1996.

AMENDING RULE-MAKING AUTHORITY

A bill designed to amend an agency's rule should preferably amend the agency's statutory authority to adopt rules to restrict or prohibit the agency from passing rules in the area of concern. SDCL 1-26-8.1 states that a rule is void if the authority to adopt it is repealed. When drafting legislation to remove statutory authority to adopt rules, be sure to check what the agency has cited as its "General Authority" and "Law Implemented." Many agencies have more than one statute authorizing the agency to adopt rules.

REPEALING OR AMENDING EXISTING RULES

It is possible to draft a bill to repeal a specific agency rule, but this procedure is not encouraged. If an agency's rule is repealed by statute, the agency may legally adopt the rule again in defiance of the legislative enactment.

Although legal, it is poor form to draft a bill to amend the wording of a rule. This procedure has the effect of substituting a statute for an agency rule.